

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
PASCUAL VALENZUELA,  
  
Defendant.

Case No. CR12-62RSL

ORDER GRANTING  
DEFENDANT'S MOTION  
FOR COMPASSIONATE  
RELEASE

This matter comes before the Court on defendant's "Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)." Dkt. #1496. The Court, having considered the motion, exhibits, and the record contained herein, finds as follows:

**I. PROCEDURAL MOTIONS**

As a threshold matter, the Court finds compelling reasons justify sealing the government's response and attached exhibits. The government's motion to seal (Dkt. #1500) is accordingly GRANTED. In addition, the parties' motions to file overlength briefs (Dkts. #1495, #1499, #1502) are GRANTED.

**II. BACKGROUND**

Defendant is a 60-year-old inmate currently incarcerated at the Federal Correctional Institution ("FCI") Sheridan. On April 25, 2013, defendant pled guilty to (1) conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, (2) conspiracy to engage in money laundering in violation of 18 U.S.C. §§ 1956(h), (a)(1)(A)(i), and (a)(1)(B)(i), and (3) conspiracy to possess firearms in furtherance of drug trafficking crimes

1 and crimes of violence, in violation of 18 U.S.C. § 924(o). Dkt. #865. On October 31, 2014,  
 2 the Court sentenced defendant to 144 months' imprisonment and five years of supervised  
 3 release. Dkt. #1329. Defendant is currently scheduled for release from the custody of the  
 4 Federal Bureau of Prisons ("BOP") on June 19, 2022. He has remained in custody since the day  
 5 of his arrest on March 29, 2012, and he now moves for compassionate release.

### 6 **III. LEGAL FRAMEWORK**

7 The compassionate release statute provides narrow grounds for defendants in  
 8 "extraordinary and compelling" circumstances to be released from prison early. See 18 U.S.C.  
 9 § 3582(c). The First Step Act of 2018 amended the procedural requirements governing  
 10 compassionate release. See id. Prior to the First Step Act's passage, only the Director of the  
 11 BOP could bring motions for compassionate release. The Director rarely filed such motions.  
 12 See, e.g., United States v. Brown, 411 F. Supp. 3d 446, 448 (S.D. Iowa 2019). Congress  
 13 amended the statute to allow defendants to directly petition district courts for compassionate  
 14 release. As amended, 18 U.S.C. § 3582(c)(1)(A) states in relevant part,

15 (c) Modification of an imposed term of imprisonment.—The court may not  
 16 modify a term of imprisonment once it has been imposed except that—

17 (1) in any case—

18 (A) the court, upon motion of the Director of the Bureau of  
 19 Prisons, or upon motion of the defendant after the defendant  
 20 has fully exhausted all administrative rights to appeal a failure  
 21 of the Bureau of Prisons to bring a motion on the defendant's  
 22 behalf or the lapse of 30 days from the receipt of such a  
 23 request by the warden of the defendant's facility, whichever  
 24 is earlier, may reduce the term of imprisonment (and may  
 25 impose a term of probation or supervised release with or  
 without conditions that does not exceed the unserved portion  
 of the original term of imprisonment), after considering the  
 factors set forth in section 3553(a) to the extent that they are  
 applicable, if it finds that—

26 (i) extraordinary and compelling reasons warrant such  
 27 a reduction; . . .

28 (ii) . . .

and that such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission[.]

Prior to passing the First Step Act, Congress directed the Sentencing Commission to promulgate a policy statement defining “extraordinary and compelling reasons” in the compassionate release context. See 28 U.S.C. § 994(t). Section 994(t) provides,

The Commission, in promulgating general policy statements regarding the sentencing modification provisions in [18 U.S.C. § 3582(c)(1)(A)], shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

The Sentencing Commission implemented this directive from Congress with a policy statement—U.S.S.G. § 1B1.13. In relevant part, the policy statement provides,

**Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A)  
(Policy Statement)**

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable, the court determines that—

(1)(A) Extraordinary and compelling reasons warrant the reduction;

...

(2) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) The reduction is consistent with this policy statement.

**Commentary**

**Application Notes:**

1. **Extraordinary and Compelling Reasons.**—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) **Medical Condition of the Defendant**—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

**(B) Age of the Defendant.**—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

**(C) Family Circumstances.**—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

**(D) Other Reasons.**—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

## 2. **Foreseeability of Extraordinary and Compelling Reasons.**—

For purposes of this policy statement, an extraordinary and

compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

3. **Rehabilitation of the Defendant.**—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.

4. **Motion by the Director of the Bureau of Prisons.**—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant’s medical condition, the defendant’s family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law[.]

U.S.S.G. § 1B1.13.

For the reasons set forth in detail in United States v. Van Cleave, Nos. CR03-247-RSL, CR04-125-RSL, 2020 WL 2800769, at \*3-5 (W.D. Wash. May 29, 2020), “the Court finds the guidance of U.S.S.G. § 1B1.13 persuasive, but not binding.” Id. The Court will exercise its discretion to consider “extraordinary and compelling” circumstances that may exist beyond those explicitly identified by the Sentencing Commission in its outdated policy statement. Id.

#### IV. DEFENDANT’S CIRCUMSTANCES

##### a. Exhaustion Requirement

Before the Court can consider the merits of defendant’s motion, it must determine whether he has met the statutory exhaustion requirement for compassionate release. See 18 U.S.C. § 3582(c)(1)(A). The parties agree that defendant satisfied this requirement by filing a

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request with the Warden of FCI Sheridan on July 20, 2020. See Dkt. #1496-1 (Ex. 1). Although his request appears to have gone unanswered, more than 30 days have elapsed since it was filed. 18 U.S.C. § 3582(c)(1)(A). Finding that defendant has exhausted his administrative remedies, the Court will consider the merits of his motion for compassionate release.

**b. “Extraordinary and Compelling” Reasons**

Defendant’s motion for compassionate release is based primarily on his heightened risk for developing serious complications if he contracts COVID-19 while incarcerated at FCI Sheridan. The Court need not reiterate the widely known information regarding the symptoms of COVID-19 and the devastating global impact of the virus. COVID-19 has created unprecedented challenges for federal prisons, where inmate populations are large and close contact between inmates is unavoidable. As of October 16, 2020, the BOP reports 1,737 federal inmates and 778 BOP staff have active, confirmed positive COVID-19 test results. See COVID-19 Coronavirus, Fed. Bureau of Prisons, <https://www.bop.gov/coronavirus/> (last visited Oct. 16, 2020). Since the BOP reported its first case in late March 2020, at least 126 federal inmates and two BOP staff members have died from the virus. Id. Fortunately, FCI Sheridan currently reports no active cases of COVID-19, but five inmates are classified as “recovered” from the virus. Id.

Defendant alleges that he is at higher risk for developing complications from COVID-19 based on his age, obesity, and hypertension. Dkt. #1496 at 3-10. The government concedes that defendant’s age of 60 places him at higher risk, but argues that “[t]he greatest risk for severe illness from COVID-19 is among those aged 85 and older.” Dkt. #1501 at 6 (citing Older Adults, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited Oct. 16, 2020)). The government also questions whether defendant’s weight places him at high risk for COVID-19. Id. at 6-7. However, defendant’s PSR indicates that he is 5’9” tall and weighs 235 pounds. PSR at ¶ 86. Defendant’s corresponding body mass index (“BMI”) reflects obesity, an underlying medical condition that the CDC has identified as increasing an individual’s risk for severe illness from COVID-19. People with Certain Medical Conditions, CDC, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-conditions.html)

1 with-medical-conditions.html (last visited Oct. 16, 2020). Finally, the government questions  
 2 whether defendant truly suffers from hypertension. Dkt. #1501 at 7-8. While defendant's BOP  
 3 medical records do not contain a formal diagnosis of hypertension, his records do confirm  
 4 numerous hypertensive blood pressure readings in recent years, reaching as high as 181/202 in  
 5 2019. See, e.g., Dkt. #1497 (Ex. 2) at 54. The CDC has advised that individuals with  
 6 hypertension may be at an increased risk for severe illness from COVID-19. People with  
 7 Certain Medical Conditions, *supra*.

8 In light of the dangers posed by COVID-19, the Court finds the combination of  
 9 defendant's age, obesity, and elevated blood pressure concerning. The Court also notes that,  
 10 including time in pretrial detention, defendant has served more than eight years in prison. He  
 11 now has less than two years remaining on his sentence. Viewing all of defendant's  
 12 circumstances together, the Court finds defendant has met his burden to demonstrate that  
 13 "extraordinary and compelling" reasons warrant his compassionate release. 18 U.S.C.  
 14 § 3582(c)(1)(A)(i).

### 15 **c. Additional Considerations**

16 Before the Court can grant defendant's motion for compassionate release, however, it  
 17 must also find that he "is not a danger to the safety of any other person or to the community, as  
 18 provided in 18 U.S.C. § 3142(g)." U.S.S.G. § 1B1.13. The government asserts that defendant's  
 19 record precludes such a finding. Dkt. #1501 at 15-16. There is no question that the offenses for  
 20 which defendant has served the current term of imprisonment are very serious. However, the  
 21 Court notes that defendant has served more than eight years of his lengthy sentence and has less  
 22 than two years remaining. Additionally, defendant has demonstrated prosocial behavior while in  
 23 prison, including completing a variety of educational programs. Dkt. #1496-4 (Ex. 5). He has a  
 24 near perfect prison disciplinary record, and his sole infraction was non-violent. Dkt. #1496-3  
 25 (Ex. 4). Defendant also has an approved release plan, which includes residing with his ex-wife,  
 26 with whom he co-parents his children and has a good relationship. Dkt. #1504. Ms. Valenzuela  
 27 appears to be invested in defendant's transition into the community, and will support defendant  
 28 financially until he can obtain employment. *Id.* In light of these circumstances, the Court finds



1 defendant is not a danger to the safety of any other person or to the community as provided in  
2 § 3142(g). See U.S.S.G. § 1B1.13.

3 In addition, prior to granting compassionate release, the Court must assess whether a  
4 sentence reduction to time served is consistent with the sentencing factors set forth in 18 U.S.C.  
5 § 3553(a). See 18 U.S.C. § 3582(c)(1)(A). Section 3553(a) requires the Court to “impose a  
6 sentence sufficient, but not greater than necessary, to comply with the purposes set forth in  
7 paragraph (2),” which requires that a sentence reflect the seriousness of and provide just  
8 punishment for the offense. 18 U.S.C. § 3553(a). Again, the offenses that led to defendant’s  
9 current term of imprisonment are very serious. But the extraordinary nature of the COVID-19  
10 pandemic has altered life as we know it. While defendant deserved the sentence the Court  
11 imposed in 2014, he has now served a large portion of that sentence. The risks to defendant’s  
12 life and health now outweigh the punitive benefits that would be gained from keeping him  
13 incarcerated. Cf. United States v. Pippin, CR16-266-JCC, 2020 WL 2602140, at \*3 (W.D.  
14 Wash. May 20, 2020). Accordingly, the Court intends to convert defendant’s remaining term of  
15 imprisonment into a one-year term of home detention as an additional condition of supervised  
16 release. Under these circumstances, the Court is satisfied that defendant’s sentence reduction is  
17 consistent with the objectives of § 3553(a).

## 18 V. CONCLUSION

19 For all the foregoing reasons, defendant’s motion for compassionate release (Dkt. #1496)  
20 is GRANTED. Additionally, the government’s motion to seal (Dkt. #1500) and the parties’  
21 motions to file overlength briefs (Dkts. #1495, #1499, #1502) are GRANTED.

22 IT IS HEREBY ORDERED that defendant’s custodial sentence be reduced to time  
23 served. Supervised release shall commence immediately upon defendant’s release from  
24 custody, during which time defendant shall be subject to the mandatory, standard, and special  
25 conditions of supervision set forth in the Judgment (Dkt. #1329), as well as the other conditions  
26 set forth in this Order:

- 27 • The defendant shall participate in the location monitoring program  
28 with Active Global Positioning Satellite technology for a period of  
12 months. The defendant is restricted to his residence at all times



1 except for employment, religious services, medical, legal reasons, or  
2 as otherwise approved by the location monitoring specialist. The  
3 defendant shall abide by all program requirements, and must  
4 contribute towards the costs of the services, to the extent financially  
able, as determined by the location monitoring specialist.

- 5 • The defendant shall abide by all federal, state, and local directives  
6 regarding the COVID-19 pandemic.

7 All other provisions of sentencing remain as previously set.

8 IT IS FURTHER ORDERED that defendant shall be released to his approved release  
9 address fourteen (14) days from the date of this order to accommodate a quarantine period with  
10 the Federal Bureau of Prisons. If defendant tests positive for COVID-19 at any time during this  
11 quarantine period, BOP will notify the government who will immediately notify the Court so  
12 that this order can be modified appropriately.

13 IT IS SO ORDERED.

14 DATED this 19<sup>th</sup> day of October, 2020.

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16 Robert S. Lasnik  
17 United States District Judge  
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